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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.2.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.73 of 2007

Commissioner of Income Tax
Chennai ...Appellant

-vs-

M/s.Union Company Motors Limited
18, Anna Salai
Chennai-2. ...Respondent

Tax Case Appeal filed under Section 260(A) of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 26.7.2006 in ITA No.2362/Mds/92 - Assessment Year 1989-90. (ITA.No. 199/92-93 dated 10.7.92m on the file of the commissioner of Income tAx (A) V Madras 34 against G.I.No.1-U, P.a.No. 47-004-C4-7453, dated 31.3.92 against the file of the Deputy Commissioner of income tax, Special Range-I Madras-34.

For Appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbraya Aiyar

JUDGMENT

(The judgment of the Court was delivered by
CHITRA VENKATARAMAN,J)

The above appeal is by the Revenue relating to the Assessment Year 1989-90.

2. The issue raised herein relates to the rectification of assessment under Section 143(1)(a). It is seen that the assessing authority went in for rectification of the assessment under Section 154 in respect of sale consideration of land and building not credited to the profit and loss but directly taken to the General Reserve Account, apart from provisions for bad and doubtful debts, provision for depreciation and investments and provision for sales tax, considered for the purposes of applying the provisions of Section 115J. The Commissioner of Income Tax (Appeals) allowed the assessee's appeal, taking the view that the issues involved were debatable issues which could not be the subject matter of the adjustment under Section 143(1)

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(a) of the Act, consequently, not amenable to Section 154 of the Act also. On the question of the assessee directly crediting the sale proceeds to the General Reserve Account, the appellate authority doubted the jurisdiction of the officer under Section 115J to work out the income by varying the book profits shown in the Profit and Loss Account, which was approved by the shareholders. In the circumstances, the appellate authority held that the officer could not rectify the order under Section 154 as a mistake apparent on the face of the record. He directed the authority to reduce the income under Section 154 by Rs2.60 crores. Thus, he allowed the appeal.

3. The Revenue went on appeal to the Tribunal. On a perusal of the factual details, the Tribunal came to the conclusion that the issues involved were debatable issues. Hence, it confirmed the view of the Commissioner. The Revenue has come on appeal raising the following questions of law:

> 1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that a decision on a debatable point of law is not a mistake apparent from record to invoke Section 154 when the same issues are well settled by the Hon'ble Supreme Court?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that adjustment to book profits under Section 115J cannot be done while rectifying an intimation under Section 143(1)(a)?

4. Heard the Senior Standing Counsel for Income Tax.

5. In the light of the view that we have taken in T.C.No.11 of 2004, following the decision of this Court in 273 ITR 350 (CIT v. NAMEEL LEATHERS AND UPPERS), on the scope of Section 143(1)(a) with reference to jurisdiction available under Section 154 of the Act, we do not find any justification in accepting the plea of the Revenue. Consequently, this appeal is dismissed on the ground that no substantial question of law arises for admitting this case.

bg

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To

1. THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL,
RAJAJI BHAVAN III FLOOR,
BESANT NAGAR, CHENNAI

2. THE COMMISSIONER OF INCOME TAX
SPECIAL RANGE I MADRAS 34.

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3.THE DEPUTY COMMISSIONER OF INCOME TAX
SPECIAL RANGE I, MADRAS 34.

4.THE COMMISSIONER OF INCOME TAX,
CHENNAI.
+ One cc to M/s Pusya Sitaraman Advocate sR 8973
MM (co)
sg 16/3/07 T.C.(A)No.73 of 2007

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